

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Chemical Light, Inc.

Plaintiff,

v.

Sun Products, Inc., a Minnesota
Corporation and Brookstone Company,
Inc., a New Hampshire Corporation

Defendant.

Civil Action No.: 03C 1279

Judge Aspen

Magistrate Judge Nolan

DOCKETED
NOV - 3 2003

FILED

OCT 17 2003

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT



NOTICE OF MOTION

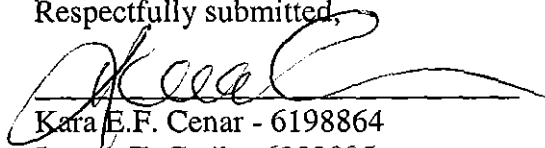
To: Sun Products, Inc.
c/o John Gill - Registered Agent
7450 Washington Ave.
Eden Prairie, Minnesota 55344

Sholly A. Blustin
Blustin & Associates, PLLC
5775 Wayzata Boulevard, Suite 700
Minneapolis, Minnesota 55416

PLEASE TAKE NOTICE that on *Tuesday, November 4, 2003* at 10:30 a.m., we shall appear before Judge Aspen, or any Judge in his stand, in Room 2568, 219 South Dearborn Street, Chicago, Illinois and then and there present *Chemical Light's Motion To Enforce Settlement* copies of which are hereby served upon you.

Dated: October 17, 2003

Respectfully submitted,



Kara E.F. Cenar - 6198864

Joseph E. Cwik - 6229095

Natalie A. Remien - 6270486

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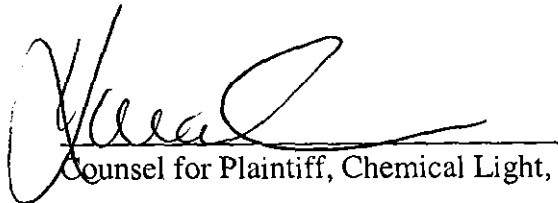
Counsel for Plaintiff, Chemical Light, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2003 a true and correct copy of the foregoing **Chemical Light's Notice of Motion and Motion To Enforce Settlement** was served via overnight delivery (Monday morning) upon the following:

Sun Products, Inc.
c/o John Gill - Registered Agent
7450 Washington Ave.
Eden Prairie, Minnesota 55344

Sholly A. Blustin
Blustin & Associates, PLLC
5775 Wayzata Boulevard, Suite 700
Minneapolis, Minnesota 55416


Counsel for Plaintiff, Chemical Light, Inc.

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CHEMICAL LIGHT'S MOTION TO ENFORCE SETTLEMENT

Plaintiff, Chemical Light, Inc., by and through its counsel, respectfully moves this Court for an order enforcing the settlement reached between Chemical Light, Inc. (hereinafter "Chemical Light") and Sun Products, Inc. (hereinafter "Sun"). In support of the Motion, Plaintiff states:

1. Chemical Light's complaint for Patent Infringement was filed against Defendants on February 20, 2003.
2. By late March 2003, the principals of Chemical Light and Sun agreed to engage in earnest settlement discussions. By mid April 2003 the principals of Sun and Chemical Light met to discuss a business resolution to the lawsuit. The principals of each company were able to reach a business resolution, in the form of a License and Distribution Agreement. The parties began operating under that Oral Agreement, while instructing their counsel to draft up formal settlement papers and a dismissal order. See Cenar Declaration filed concurrently herewith, para 5a - 5h.

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3. The parties represented to the Court on numerous occasions that the case had settled and that they were just working out the language issues of the agreement. The Court docket reflects the number of Status hearings and continuances provided to the parties to accomplish this task. See, Cenar Declaration, para 3, para 5j, 5q, 5u.

4. Many lengthy negotiations took place between the parties and their counsel. See, Cenar Declaration para 5a to 5hh for a detailed itemization of the various e-mails and drafts exchanged between the parties.

5. On Thursday October 2, 2003 counsel for Sun represented to Counsel for Chemical Light that the final negotiated language had been agreed to and that he would have his client sign the documents tomorrow. Cenar Declaration para 5 cc, Ex DD.

6. On Friday October 3, 2003, counsel for Sun represented that the documents were final, and that he had forwarded the final documents (attached to the e-mail) to his client, Sun, for signature. See, Cenar Declaration para 5 ff, Ex GG.

7. In the morning of October 7, 2003 counsel for Sun Sholly Blustin represented that his client was faxing the signed document back to Sun's counsel, and that the signed documents would be forwarded to Chemical Light's counsel. See Cenar Declaration, para 5 hh, Ex II.

8. At 10:15 am counsel for Sun faxed the signature pages for the Settlement Agreement, the License/Distribution Agreement, and the Stipulation of Dismissal. See Cenar Declaration para 6, Ex DD. A copy of the signature pages are attached as Exhibit DD. Sun's counsel represented that the entire documents would be sent by Federal Express on October 7, 2003. See Cenar Declaration, para 6, Ex JJ.

9. Based upon this representation, and receipt of the faxed signatures, counsel for Chemical Light contacted Judge Aspen's courtroom deputy to advise the Court that the parties had settled and that the signed stipulation of dismissal will be forwarded to the Court. Based upon this representation, the Court struck the status hearing for that date.

10. Attached as Exhibit A to the Cenar Declaration is a copy of the entire License Agreement, Settlement Agreement and Stipulation of Dismissal signed by Chemical Light, along with the corresponding signature pages of Sun's president, John Gill.

11. Instead of sending the Federal Express package, as promised, Sun sent a letter to Chemical Light's counsel attempting to "rescind" its signature on the agreement, and representing that his counsel, Sholly Blustin, no longer represented the company. A copy of the October 8, 2003 letter is attached to the Cenar Declaration, para 7, Ex KK. Sun also sent a copy of this letter to Chemical Light. A copy of the letter sent to Chemical Light is attached to the Cenar declaration, para 8, Ex LL.

12. This Court has the power and the authority to enforce the settlement Agreement reached by the parties. *Robert DeFalco v. Oak Lawn Public Library, 1999 U.S. Dist. Lexis 19222 (ND IL 1999.)*, attached as Exhibit 1. *Laserage Technology Corp v. Laserage Laboratories Inc. et al, 972 F.2d 799 (7th Cir 1992)*. Chemical Light respectfully moves this Court for an Order enforcing the Agreement.

13. Sun's attempt to "rescind" its signatures on the settlement is without basis or merit. Rescission of a contract refers to cancellation of the contract to restore the parties to the status before the contract. *Solar et al v. Weinberg, 274 Ill.App. 3d 726, 733*

(*Ill App. 1st Dist 1995*). A party is entitled to rescission only where there has been substantial non-performance or breach by the other party. *Id.* The remedy of rescission is an equitable one and its application is left largely to the discretion of the trial court. *Id.* Sun has not shown any breach of the agreement by Chemical Light.

14. “Equity will not lend its aid to reform a written instrument in the absence of fraud, accident, or mutual mistake, sufficiently alleged and clearly proved.” *Cameron v. Bogusz 305 Ill.App.3d 267, 272 (Ill. App. 1st Dist. 1999)*. Sun has not and cannot prove any of the required conditions. The Settlement Agreement resulted after lengthy negotiations, with the aid of counsel. It is contained in two detailed documents that were the subject of drafting and negotiations for months. Negotiations were finalized, final drafts were sent to and approved by the clients, ***and they were signed by each of the respective parties.*** They are final agreements that were negotiated in good faith. “Public Policy favors settlements and dictates that, in the absence of fraud or duress, settlements once made should be final.” *Cameron v. Bogusz 305 Ill.App.3d 267, 272 (Ill. App. 1st Dist. 1999)*.

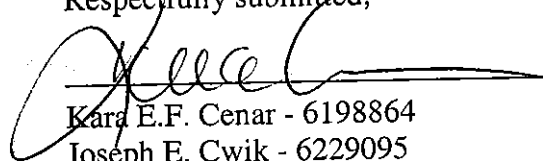
15. Chemical Light will be materially harmed by the unilateral attempt by Sun to back out of the settlement it reached months ago. Chemical Light, upon the representation by Sun that the parties had settled, and in fact were operating under the terms of the settlement agreement which included a license, did not pursue its claim for patent infringement, nor did it seek an injunction. Chemical Light held off serving Sun’s customer, Brookstone, with the complaint, as part of the negotiation. Thousands of dollars in attorneys fees were expended in connection with the drafting and negotiating of

the Settlement Agreement. Chemical Light relied upon Sun's representation that the parties had an Agreement.

WHEREFORE, Chemical Light respectfully requests that this Court enforce the Settlement Agreement signed by the parties, and in accordance with the terms thereof, order that the patent infringement case be dismissed, without prejudice, and that the Court will retain jurisdiction to enforce the terms of the settlement agreement. Chemical Light also seeks an award of its attorneys fees and costs incurred as a result of Sun's wrongful attempt to "rescind" its signatures on the Agreement, and for Chemical Light's having to file this Motion to Enforce.

Dated: October 17, 2003

Respectfully submitted,



Kara E.F. Cenar - 6198864

Joseph E. Cwik - 6229095

Natalie A. Remien - 6270486

WELSH & KATZ, LTD.

120 S. Riverside Plaza • 22nd Floor

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Counsel for Plaintiff, Chemical Light, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2003 a true and correct copy of the foregoing **Chemical Light's Motion To Enforce Settlement** was served via overnight delivery (Monday morning) upon the following:

Sun Products, Inc.
c/o John Gill - Registered Agent
7450 Washington Ave.
Eden Prairie, Minnesota 55344

Sholly A. Blustin
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MEMORANDUM OF LAW IN SUPPORT OF CHEMICAL LIGHT'S
MOTION TO ENFORCE THE SETTLEMENT REACHED
BETWEEN THE PARTIES

I. INTRODUCTION

On October 7, 2003, after months of negotiation, the papers memorializing the oral settlement agreement between Chemical Light, Inc. (hereinafter "Chemical Light") and Sun Products, Inc. (hereinafter "Sun") were *signed* by the parties.¹

The next day, without explanation or basis, Defendant Sun, sent a letter attempting to "rescind" its signature on the agreement. Amazingly, John Gill of Sun simultaneously sent a copy of the letter to Chemical Light with a fax cover sheet acknowledging the continued existence of the relationship between Chemical Light and

¹ A copy of the final agreement along with the signature pages of both parties is attached as Exhibit A to the Declaration of Kara Cenar filed concurrently herewith (hereinafter Cenar Declaration).

Sun. A copy of these letters are attached as Exhibits KK and LL to the Cenar Declaration, filed concurrently herewith.

Chemical Light respectfully requests that this Court enter an order enforcing the terms of the signed settlement agreement and License Agreement, and for sanctions in the form of attorneys fees and costs incurred with the preparation and filing of this Motion for Sun's bad faith attempt to "rescind" the Agreements.

II. FACTS

The declaration of Kara E.F. Cenar, and the exhibits thereto, is filed concurrently herewith and is incorporated herein by reference. This declaration contains the various e-mails reflecting the parties communications over the drafting, editing, finalizing and signing of the Agreement. The record establishes that the parties orally agreed to a settlement of the litigation in the Spring 2003, and have been operating under the oral agreement for months, while instructing their counsel to draft written papers reflecting the parties agreement. Cenar Declaration para 5a - 5hh. (See also e.g., Cenar Declaration para 5h, Ex I, Quoting Sun's counsel Sholly Blustin "As an aside, I did check with my client today and it still looks as if our clients are continuing to work together without incident.") (See, further, Ex LL of Cenar Declaration wherein John Gill, President of Sun confirms the existence of the relationship between Sun and Chemical Light).

The Settlement Agreement and License/Distribution Agreement papers were negotiated, drafted, edited, reviewed, and finalized, by the parties and their counsel over the next several months. See Cenar Declaration para 5a - 5ff. Meanwhile the parties continued to operate under the oral Agreement. See e.g. Cenar Declaration para 5h, Ex I.

On October 7, 2003 the papers memorializing the oral settlement agreement were *signed* by the parties. See Cenar Declaration para 2, Ex A1, A2, A3. The next day, without explanation or basis, Defendant Sun, sent a letter attempting to “rescind” its signature on the agreement. See Cenar Declaration para 7-8, Ex KK and LL.

III. ARGUMENT

A. This Court Has The Authority To Enforce The Settlement Between The Parties

This motion is being filed to enforce the terms of the signed Agreement and Settlement Agreement that is attached as Ex A to the Cenar Declaration.

This Court has the power and the authority to enforce the Settlement Agreement reached by the parties. *Robert DeFalco v. Oak Lawn Public Library, 1999 U.S. Dist. Lexis 19222 (ND IL 1999.)* , attached as Exhibit 1 to Motion. *Laserage Technology Corp v. Laserage Laboratories Inc. et al, 972 F.2d 799 (7th Cir 1992).*

Enforcement of the oral Settlement Agreement, as memorialized by the written settlement papers, is proper and necessary in this case. Enforcement of the Agreement requires that all the traditional elements of a contract be met, which they are in this case. *Id.* There was an offer to compromise (the patent lawsuit will not be pursued in exchange for a cross license and distributorship agreement). There was an acceptance. In fact the parties have been and continue to operate under the terms of the oral settlement Agreement. See, e.g. Cenar Declaration para 5 h, Ex I and LL. There was a meeting of the minds as to the terms of the agreement (See, Cenar Declaration para 2 Exhibit A).

In fact the record reflects a detailed negotiation, with counsel representation, and constant review and approval by the clients. See Cenar Declaration para 5a - 5hh. Sun’s counsel represented on numerous occasions that he had sent negotiated language to his

clients for review, and that the clients had approved the language. See, Cenar Declaration Exhibits H, M, P, Q, R, U, Z, DD, GG, II, JJ. Sun even signed the agreement. See Cenar Declaration para 6, Exhibit JJ.

Since all of the elements for a binding agreement have been met, the Settlement Agreement, the Distribution and License Agreement, and the Stipulation of Dismissal which are attached as Exhibit A to the Cenar Declaration should be enforced.

B. Sun's Attempt To "Rescind" Its Signature On The Agreement Should Be Rejected

Sun was facing a patent infringement lawsuit against itself and its customer Brookstone. In an effort to save itself and its customer from the litigation, the principal of Sun, John Gill, orally agreed to accept a license under the patent, and, in exchange, provide Chemical Light with exclusive rights to distribute Sun's product to the Bulk market. In the negotiation, Sun accepted disclosure of confidential and proprietary information from Chemical Light about the market and customers. The parties operated under the oral agreement for months while the parties had their attorneys draft the language for the written Settlement Agreement. Meanwhile Sun continued to sell and distribute product that was accused of infringing Chemical Light's patent.

As Sun began to learn more about the value of Chemical Light's bulk market, Sun tried to back out of the Agreement. See eg., Cenar Declaration, Ex U, V. Chemical Light held fast to its position, and ultimately the parties agreed to all of the language in the agreement. See Cenar Declaration Ex V, W, X, Y, Z, DD, EE, FF, GG, HH, II, JJ. This language, was written, edited, negotiated, and finalized by Sun with the assistance of its counsel. See Cenar Declaration para 5. Sun's counsel made repeated representations that he had sent the revised language to Sun for review and approval and that Sun had

reviewed and approved the language. See Cenar Declaration Ex H, M, P, Q, R, U, Z, DD, GG, II, JJ. Ultimately Sun signed the Agreement. See Cenar Declaration para 6 Ex JJ.

Sun's attempt to "rescind" its signatures on the settlement is without basis or merit. Rescission of a contract refers to cancellation of the contract to restore the parties to the status before the contract. *Solar et al v. Weinberg*, 274 Ill.App. 3d 726, 733 (Ill App. 1st Dist 1995). A party is entitled to rescission only where there has been substantial non-performance or breach by the other party. *Id.* The remedy of rescission is an equitable one and its application is left largely to the discretion of the trial court. *Id.* Sun has not shown any breach of the agreement by Chemical Light or any other basis for rescinding its signature on the agreement.

"Equity will not lend its aid to reform a written instrument in the absence of fraud, accident, or mutual mistake, sufficiently alleged and clearly proved." *Cameron v. Bogusz* 305 Ill.App.3d 267, 272 (Ill. App. 1st Dist. 1999). Sun has not and cannot prove any of the required conditions. The Settlement Agreement resulted after lengthy negotiations, with the aid of counsel. It is contained in two detailed documents that were the subject of drafting and negotiations for months. Negotiations were finalized, final drafts were sent to and approved by the clients, and they were signed by each of the respective parties. They are final agreements that were negotiated in good faith. "Public Policy favors settlements and dictates that, in the absence of fraud or duress, settlements once made should be final." *Cameron v. Bogusz* 305 Ill.App.3d 267, 272 (Ill. App. 1st Dist. 1999).

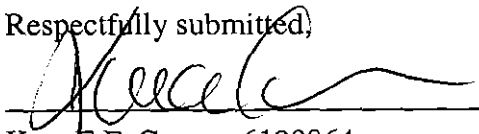
IV. CONCLUSION

Chemical Light is entitled to enforcement of the Settlement Agreement, and License and Distribution Agreement. Sun has not proven a right to rescind the Agreement.

Wherefore Chemical Light respectfully requests that this Court enter an order enforcing the Settlement Agreement and for an award of its Attorneys Fees and Costs incurred in connection with Sun's bad faith attempt to back out of a settlement it had agreed to and had been operating under.

Dated: October 17, 2003

Respectfully submitted,



Kara E.F. Cenar - 6198864

Joseph E. Cwik - 6229095

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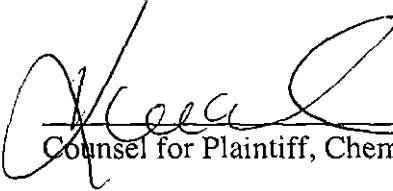
Counsel for Plaintiff, Chemical Light, Inc.

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